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Extreme poverty and human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted in accordance with Human Rights Council resolution 26/3.

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Report of the Special Rapporteur on extreme poverty and human rights

Summary

Cholera arrived in Haiti in October 2010, soon after the arrival of a new contingent of United Nations peacekeepers from a cholera-infected region. The scientific evidence now points overwhelmingly to the responsibility of the peacekeeping mission as the source of the outbreak. So far, 9,145 persons have died and almost 780,000 have been infected.

In August 2016, after a draft of the present report was leaked to the media, it was announced that the Secretary-General was developing a new approach which would address many of the concerns raised in the report. The Deputy Secretary-General indicated that the Secretary-General has also reiterated that the United Nations has a "moral responsibility" to the victims and would provide them with additional "material assistance and support". The Special Rapporteur warmly welcomes this initiative.

It remains indispensable, however, that the new process should also involve an apology entailing acceptance of responsibility and an acceptance that the victims' claims raise private law matters, thus requiring the United Nations to provide an appropriate remedy. Acceptance of these two elements would in no way prejudice the Organization's right to immunity from suit, nor would it open the floodgates to other claims.

The legal position of the United Nations to date has involved denial of legal responsibility for the outbreak, rejection of all claims for compensation, a refusal to establish the procedure required to resolve such private law matters, and entirely unjustified suggestions that the Organization's absolute immunity from suit would be jeopardized by adopting a different approach. The existing approach is morally unconscionable, legally indefensible and politically self-defeating. It is also entirely unnecessary. In practice, it jeopardizes the immunity of the United Nations by encouraging arguments calling for it to be reconsidered by national courts; it upholds a double standard according to which the United Nations insists that Member States respect human rights, while rejecting any such responsibility for itself; it leaves the United Nations vulnerable to eventual claims for damages and compensation in this and subsequent cases, which are most unlikely to be settled on terms that are manageable from the perspective of the Organization; it provides highly combustible fuel for those who claim that United Nations peacekeeping operations trample on the rights of those being protected; and it undermines both the overall credibility of the Organization and the integrity of the Office of the Secretary-General.

The past policy of the United Nations relied on a claim of scientific uncertainty. That is no longer sustainable given what is now known. The United Nations was clearly responsible and it must now act accordingly.

Contents

		Page
I.	Introduction	4
	A. Role of the Special Rapporteur	4
	B. Approach of the report	5
II.	Source of the outbreak and response of the United Nations	6
	A. Scientific evidence	6
	B. Response of the United Nations	8
	C. Legal response of the United Nations	10
	D. Responses to the position of the United Nations	13
	E. Role of States	14
III.	Addressing the major concerns	14
	A. Agreed principles	14
	B. Arguments against accountability	15
IV.	Why the position of the United Nations needs to change	19
V.	New approach of August 2016	20
VI.	The way forward	21

I. Introduction[1]

1. The present report, on the responsibility of the United Nations in relation to cholera in Haiti, is submitted in accordance with Human Rights Council resolution 26/3.

2. Cholera arrived in Haiti in October 2010, just a few days after the arrival of a new contingent of peacekeepers to join the United Nations Stabilization Mission in Haiti (MINUSTAH). They had come from a country in which an identical strain of the disease was prevalent. More than 9,000 persons have died so far in Haiti as a result of the epidemic that ensued. The scientific evidence points overwhelmingly to the conclusion that the arrival of Nepalese peacekeepers and the outbreak of cholera are directly linked to one another. While the Secretary-General has accepted "moral responsibility" and has announced, in response to a draft of the present report, that a new approach, including additional "material assistance and support" for the victims, would be adopted, the United Nations continues, at the insistence of its legal advisers, to deny legal responsibility, refuses to establish any procedure to resolve the disputes over its responsibility, and is blocking all other attempts at resolution. It does this despite the fact that its absolute legal immunity has recently been upheld by courts in the United States of America. To justify this policy of abdicating responsibility, the United Nations has relied solely on an undisclosed internal legal opinion, the thrust of which has been divulged but the text of which remains confidential.[2] In the view of the Special Rapporteur, and of the vast majority of expert commentators, the legal approach adopted by the Organization is deeply flawed. Because it was drafted at a time when the United Nations denied its responsibility, which seems no longer to be the case, the opinion should be reconsidered.

3. The Special Rapporteur considers that the Organization's existing legal approach of simply abdicating responsibility is morally unconscionable, legally indefensible and politically self-defeating. The abdication approach is not only unsustainable; it is also entirely unnecessary. There are powerful reasons why the Secretary-General should urgently adopt a new approach, one that respects the human rights of the victims while protecting the Organization's immunity, honouring its commitment to the rule of law and upholding the integrity of the peacekeeping system.

A. Role of the Special Rapporteur

4. The present report is submitted by the Special Rapporteur on extreme poverty and human rights. Cholera has proven to be a major challenge for the poorest country in Latin America and the Caribbean. Haiti ranks 163rd out of 188 countries on the Human Development Index for 2015, and the United Nations Development

[1] The Special Rapporteur is grateful to Christiaan van Veen for his invaluable assistance in the preparation of this report and to Silvia De Rosa and Tom Enering for excellent research assistance.

[2] The legal position of the United Nations was alluded to in letters dated 21 February 2013, 5 July 2013 and 25 November 2014, which are described below. Good practice would normally require that a detailed legal opinion be prepared for internal use and then relied upon in the drafting of these letters. This practice is usually followed in order to avoid any suggestion that the legal advisers are making it up as they go along.

Programme estimates that over 42 per cent of its population live in or near multidimensional poverty. World Bank figures are even more distressing, indicating that more than 6 million (59 per cent) of the population of 10.4 million Haitians live under the national poverty line of $2.42 per day, and over 2.5 million (24 per cent) live under the national extreme poverty line of $1.23 per day.[3]

5. Cholera has thus far infected at least 7 per cent of the entire population of Haiti. It has had its greatest impact on those living in poverty, who are poorly placed to cope with the consequences of the disease or to take the precautions necessary to reduce the risks involved. It has also diverted scarce resources in an already impoverished country.

6. The motivation for preparing the present report arises from the previous joint efforts by the Special Rapporteur in close collaboration with four other mandate holders — those concerned with the situation of human rights in Haiti, health, housing, and water and sanitation. While the report is not jointly authored, it builds upon the shared concerns of this group of mandate holders and seeks to expand upon the positions that they have jointly expressed in previous statements. The mandate holders drew strong encouragement from a letter dated 25 February 2016 sent to them by the Deputy Secretary-General in which he welcomed their "offer to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities". After consultation with each of the mandate holders, it was decided that a focused report to the General Assembly by the Special Rapporteur could help advance this dialogue.

B. Approach of the report

7. The report is based upon human rights principles and attaches particular importance to obligations to respect rights, to provide remedies and to ensure accountability. However, the Special Rapporteur recognizes that arguments based on human rights or international law often do not suffice to convince Member States, or even the United Nations, to take the necessary steps. Human rights reports too often assume that pointing to international norms and asserting obligations is all that is required to bring about a fundamental change of policy on the part of Governments or international organizations. The reality is usually much more complex. Those in authority also need to be convinced of the unsustainability and costliness of existing policies, and of the feasibility of change.

8. The report thus also relies on arguments rooted in pragmatism and self-interest. It adopts this approach not only for strategic reasons, nor because many legal analyses of the issues have already been published, but because its goal is to convince the key actors that a policy reversal is essential, entirely feasible, and can be set in train immediately.

9. The arguments that arise most consistently, and which seem to have the greatest purchase, are those based on fears that accepting responsibility might undermine the Organization's immunity, jeopardize its financial viability, have a negative impact on future peacekeeping, create bad precedents, or embroil the United Nations in endless litigation.

[3] See www.worldbank.org/en/country/haiti/overview.

10. In contrast, the starting point of the report is to underscore that the existing abdication approach cannot be justified by invoking fundamental principles and claiming that these would be jeopardized if the United Nations accepts responsibility. As explained below, acceptance of responsibility can protect rather than undermine the Organization's immunity. Formal acceptance of human rights principles by the United Nations is not somehow problematic; third-party liability is not a concept that is alien to the United Nations, and remedies can be provided without opening Pandora's box.

11. The report seeks to assuage these fears and to identify a way forward that upholds the human rights of the Haitian people, while also saving the United Nations from a singularly self-destructive approach which is undermining its legitimacy and credibility.

12. First, however, because United Nations officials have consistently disputed the issue, it is necessary to review the scientific evidence that establishes MINUSTAH as the source responsible for introducing cholera into Haiti and to demonstrate that the legal arguments invoked by the United Nations to abdicate responsibility are wholly unconvincing.

II. Source of the outbreak and response of the United Nations

13. Haiti's first-ever cholera outbreak began in mid-October 2010. Many scholars have repeated the claim made by the independent panel of experts on the cholera outbreak in Haiti that this was the first time in 100 years that cholera had occurred in Haiti, but in fact there is no record of cholera ever having previously been in Haiti.[4] As of 28 May 2016, United Nations figures had recorded 9,145 deaths from cholera and 779,212 persons infected. Scientific studies have also claimed that the actual mortality rate is almost certainly substantially higher than reported.[5] Between January and April 2016, 150 new deaths occurred, an increase of 18 per cent over the same period in 2015.

A. Scientific evidence

14. Starting on 8 October 2010, a contingent of Nepalese peacekeepers, who had completed their training in Kathmandu at the time of a cholera outbreak there,[6] arrived at the MINUSTAH Annapurna Camp in Mirebalais, Haiti. Within days, a few villagers living in Mèyé who drew their water from a stream close to the camp toilets were infected. By way of explanation, later investigations revealed that on 16 or 17 October a sanitation company under contract to MINUSTAH emptied the camp's waste tanks. Because the septic pit into which the waste should have been deposited was full, "the driver dumped the contents and a large amount of fecal

[4] Deborah Jenson and others, "Cholera in Haiti and other Caribbean regions, 19th century", *Emerging Infectious Diseases*, vol. 17, No. 11 (November 2011) p. 2153.

[5] Francisco J. Luquero and others, "Mortality rates during cholera epidemic, Haiti 2010-2011", *Emerging Infectious Diseases*, vol. 22, No. 3 (March 2016), p. 410.

[6] "Nepal: cholera outbreak in Kathmandu", 23 September 2010. Available from http://crofsblogs.typepad.com/h5n1/2010/09/nepal-cholera-outbreak-in-kathmandu.html.

waste entered the local stream and flowed on to the Artibonite River. By the next morning, many in downstream communities were infected".[7]

15. As the magnitude of the disaster became known, key international officials carefully avoided acknowledging that the outbreak had resulted from discharges from the MINUSTAH camp.[8] The implication that cholera had come from elsewhere also drew support from an environmental theory suggested by some scientific observers according to which the cholera microbe is naturally present in many backwater settings and can be activated by environmental shocks such as the earthquake that hit Haiti in January 2010 or by unusually heavy rains. Nevertheless, most scientific and media sources rejected this theory and placed the blame clearly upon the peacekeepers.[9]

16. In order to resolve the controversy, the Secretary-General, to his credit, established the panel of independent experts in January 2011. In its report,[10] issued in May 2011, the panel expressly rejected the environmental theory. Instead, it found that "the evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Mèyé Tributary of the Artibonite River with a pathogenic strain of current South Asian type *Vibrio cholerae* as a result of human activity". If the experts had left it at that, the conclusion would have been that MINUSTAH peacekeepers were responsible for the outbreak. But they went on to claim that the dumping of faeces alone "could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies ... coupled with conducive environmental and epidemiological conditions". By adding this observation, the experts suggested that nature, as well as the country's underdevelopment, were also to blame. This enabled them to reach their ultimate conclusion, that the "outbreak was caused by the confluence of circumstances ... and was not the fault of, or deliberate action of, a group or individual".

17. In response to the controversy provoked by this ambiguous and inconsistent assessment, the panel published a follow-up article in 2013 introducing a new formulation, that "the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti". They also noted that their scientific language had been accurately translated in a newspaper report that stated their conclusion to be that the outbreak "was almost certainly caused by a poorly constructed sanitation system installed at a rural camp used by several hundred United Nations troops from Nepal". They went on to explain why they asserted that no one was at fault: "We do

[7] Ralph R. Frerichs, *Deadly River: Cholera and Cover-Up in Post-Earthquake Haiti* (Cornell University Press, 2016), p. 243.

[8] The Pan American Health Organization (PAHO) suggested, for example, that the outbreak was "closely linked to inadequate environmental management". PAHO, "PAHO responds to cholera outbreak in Haiti", press release, 21 October 2010.

[9] Renaud Piarroux, "Rapport de mission sur l'épidémie de choléra en Haïti" (2010); and Renaud Piarroux and Stanislas Rebaudet, "Cholera in Haiti: epidemic and fight history: prospect and recommendations", Assistance publique-Hôpitaux de Marseille, July 2016.

[10] Available from www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf.

not feel that this was a deliberate introduction of cholera into Haiti"; rather, it was "an accidental and unfortunate confluence of events".[11]

18. Almost four years after the initial spillage, a report of the Office of Internal Oversight Services Internal Audit Division, whose public release was long delayed, found that the regulatory framework for effective waste management in MINUSTAH continued to be unsatisfactory, a rating that signified that "critical and/or pervasive important deficiencies" existed.[12]

B. Response of the United Nations

19. For the most part, the question of who bears responsibility for bringing cholera to Haiti has been systematically sidestepped in United Nations analyses. The first technique has been to take refuge in the passive voice, whereby readers are told that cholera "emerged", or "occurred", or "a severe outbreak of cholera was confirmed". In other words, it just happened, and no scientific or technical explanation is needed. Another technique has been to invoke the need to move beyond the past and focus instead on the future. The past is seen neither as a vital element in devising effective policies for the future, nor as a dimension that needs to be understood if non-repetition is to be promoted. A third approach has been to replace the term "responsibility" by "blame", and then to say that playing the "blame game" is unhelpful, distracting, unanswerable or divisive, and thus to be avoided. For example, although the panel was appointed precisely to "investigate and seek to determine the source" of the outbreak, the bottom line of their analysis was that identifying the source was "no longer relevant to controlling the outbreak". It was therefore time to look ahead and focus instead on preventive measures.

20. Although the report by the panel has been central to the arguments made by United Nations officials in response to calls for the Organization to accept responsibility, the approach taken by the United Nations has been inconsistent and somewhat unpredictable. In some contexts, the panel's conclusions have been challenged and their recommendations rejected; in others, their finding of no fault has been endorsed and heavily relied upon.

21. Immediately after the publication of the panel's report in May 2011, a United Nations spokesperson was dismissive of the report on the grounds that it did "not present any conclusive scientific evidence linking the outbreak to the MINUSTAH peacekeepers or the Mirebalais camp".[13] Senior officials have continued to rely on this defence. However, the more detailed and official response provided in a letter dated 25 November 2014 from Assistant Secretary-General Pedro Medrano Rojas, Senior Coordinator for the Cholera Response in Haiti, addressed to the special procedures mandate holders took a different tack. Although the letter is long and detailed, it curiously makes no mention of the panel's principal finding, which was, as noted above, that that "the source of the Haiti cholera outbreak was due to contamination of the Meye Tributary of the Artibonite River with a pathogenic strain of current South Asian type *Vibrio cholerae* as a result of human activity". In other words, MINUSTAH was indeed the source. Instead, after citing the panel's

[11] Renicle Lantagne and others, "The cholera outbreak in Haiti: where and how did it begin?", *Current Topics in Microbiology and Immunology*, vol. 379 (May 2013) p. 145.

[12] Report 2015/068, 30 June 2015.

[13] See www.reuters.com/article/us-haiti-cholera-panel-idUSTRE74457Q20110505.

reference to poor water and sanitation conditions and inadequate medical facilities, Mr. Medrano suggested that the main outcome of the inquiry was the statement that the outbreak "was not the fault of, or due to deliberate action by, a group or individual". Similarly, regularly updated fact sheets describing the United Nations response continue to make no mention of the panel's principal conclusion in relation to MINUSTAH. It has been airbrushed out of the picture.

22. It is also noteworthy that having so enthusiastically embraced the panel's no fault statement, the United Nations effectively rejected some of its other key suggestions for screening and prophylaxis, an approach strongly challenged in a recent report by a group of experts.[14]

23. Because the position taken by United Nations officials relies heavily on the claim that there remains doubt as to the source of the cholera outbreak and invokes the panel's report in support, it is appropriate both to assess the validity of the panel's consistently cited assessment and to consider more recent scientific assessments. Before doing so, it should be noted that there is a fundamental inconsistency in the panel's conclusions. After stating clearly that "the source of the Haiti cholera outbreak was due to contamination", the report goes on to say that "[t]he introduction of this cholera strain as a result of environmental contamination with feces could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies". Presumably, the panel intended to say that the contamination could not alone have been the sole cause, had there not been deficiencies in the environment into which the faeces were released. But that is not in fact what the report states.

24. From a legal perspective, there are essential flaws in the reasoning of the panel in finding no fault. First, the experts' conclusion that the MINUSTAH base was the source makes it very difficult to then conclude that no individual or group was at fault. Second, the experts provide no analysis whatsoever to support their no fault assertion. Third, and most importantly, in its report the panel adopts a scientific rather than a legal approach, but this does not prevent it from purporting to offer a legal conclusion that no fault can be found, although it neither identifies any legal standard nor undertakes any legal assessment of evidence. The explanation it subsequently provided — that it did not "feel" that cholera was "deliberately" introduced — completely fails to mention, let alone address, the central issue of negligence which lies at the heart of the legal issue of fault in this case. These flaws clearly invalidate the no fault finding on which the United Nations has consistently sought to rely so heavily in order to avoid responsibility.

25. Finally, as noted above, the panel sought to mitigate the Organization's responsibility by noting that the outbreak was due not to one single event but rather to a "confluence of circumstances", including deficient water, sanitation and health-care systems. But again, apart from being inconsistent with the principal finding that MINUSTAH was indeed responsible, this construction conflates responsibility for bringing cholera to Haiti on the one hand with the country's vulnerability on the other hand. The fact is that cholera would not have broken out but for the actions of the United Nations.

[14] Joseph Lewnard and others, "Strategies to prevent cholera introduction during international personnel deployments: a computational modeling analysis based on the 2010 Haiti outbreak", *PLoS Medicine*, vol. 13, No. 1 (January 2016).

26. In the more than five years since the independent panel of experts submitted its report, there have been many scientific studies that have evaluated the evidence and have added new elements to what was known at that time.[15] It is beyond the scope of the present report to recount the analyses and conclusions of the various studies, but this task has been undertaken systematically in a book published in June 2016. Its author, Ralph R. Frerichs, is professor emeritus of epidemiology at the University of California at Los Angeles and the book provides a painstaking and even-handed assessment of the scientific debates that have taken place.[16] For present purposes, it must suffice to note that the book concludes that the peacekeepers were responsible for bringing cholera. In doing so, it systematically vindicates the conclusions reached by one of the first international experts on cholera to investigate the outbreak in Haiti, Dr. Renaud Piarroux.[17] It also deplores what it describes as a "misinformation campaign to protect the United Nations and the peacekeeping program".

27. The bottom line is that continued United Nations reliance on the argument that the scientific evidence is ambiguous or unclear as a way of avoiding legal responsibility is no longer tenable. It might possibly have been defensible in 2010 or even 2011, but subsequent research has provided as clear a demonstration of responsibility as is scientifically possible. If the United Nations chooses to continue to contest this conclusion, it should establish an independent inquiry without delay.

C. Legal response of the United Nations

28. On 3 November 2011, a petition was lodged with MINUSTAH on behalf of some 5,000 cholera victims claiming (a) a fair and impartial hearing; (b) monetary compensation; (c) preventive action by the United Nations; and (d) a public acknowledgement of United Nations responsibility and a public apology. Sixteen months later the Under-Secretary-General for Legal Affairs replied, noting that "the United Nations is extremely saddened by the catastrophic outbreak of cholera, and the Secretary-General has expressed his profound sympathy for the terrible suffering caused by the cholera outbreak". The Under-Secretary-General went on to make what seems to be an indirect reference to the theory that the earthquake that had occurred nine months earlier was the real culprit: "The cholera outbreak was not only an enormous national disaster, but was also a painful reminder of Haiti's vulnerability in the event of a national emergency." After recalling the independent panel's "confluence of circumstances" and no fault findings, the Under-Secretary-General deemed the claims "not receivable pursuant to Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations". That provision requires the United Nations to provide for appropriate modes of settlement of disputes of a private law character to which it is a party, but the Under-Secretary-General considered the claims not to be of a "private law character" because their consideration "would necessarily include a review of political and policy matters".[18]

[15] See Lewnard and others; and Fabini D. Orata, Paul S. Keim and Yan Boucher, "The 2010 cholera outbreak in Haiti: how science solved a controversy", *PLoS Pathogens*, vol. 10, No. 4 (April 2014).

[16] Frerichs, *Deadly River*.

[17] Renaud Piarroux and others, "Understanding the cholera epidemic, Haiti", *Emerging Infectious Diseases*, vol. 17, No. 7 (July 2011), p. 1161.

[18] Letter dated 21 February 2013 from the Under-Secretary-General for Legal Affairs, Patricia

29. The claimants challenged the non-receivability finding and requested either mediation or a meeting to discuss the matter. In July 2013, the Under-Secretary-General wasted no words in dismissing such requests: "In relation to your request for the engagement of a mediator, there is no basis for such engagement in connection with claims that are not receivable. As these claims are not receivable, I do not consider it necessary to meet and further discuss this matter."[19] Left with no further recourse within the United Nations, the claimants filed a class action suit in October 2013 with the United States District Court for the Southern District of New York. In January 2015, the court ruled that the defendants were immune from suit, a finding upheld on 19 August 2016 in *Georges v. United Nations* by the Court of Appeals for the Second Circuit.

30. While the brevity of the present report precludes a detailed legal analysis, the basic principles are clear. The United Nations has long accepted that, as an attribute of its international legal personality, it can incur obligations and liabilities of a private law nature.[20] It also recognizes its international responsibility for damages caused by the activities of United Nations forces within this framework. In its resolution 52/247 (1998) on third-party liability the General Assembly set up a special regime to deal with third-party claims in the context of peacekeeping missions, although it set temporal, financial and other limitations to that liability.

31. Claims of a "private law character" are also referred to in the MINUSTAH status-of-forces agreement, which defines them as "[t]hird-party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to MINUSTAH". In elaborating on this category, the Secretary-General has stated that claims received in the past include "claims for compensation submitted by third parties for personal injury or death and/or property loss or damage incurred as a result of acts committed by members of a United Nations peacekeeping operation within the 'mission area' concerned" (A/C.5/49/65, para. 15). Such claims are distinguished from those "based on political or policy-related grievances against the United Nations, usually related to actions or decisions taken by the Security Council or the General Assembly" and which often "consist of rambling statements denouncing the policies of the Organization" and claiming that financial losses resulted therefrom (ibid., para. 23).

32. Claims received in the context of peacekeeping operations are often solved amicably, but the United Nations keeps all such matters confidential. A former official responsible for such claims over a 10-year period identified only one other case of non-receivability on these grounds, which related to Kosovo.[21] That case was also referred to in the 2014 letter to the special procedures mandate holders. It involved a claim for damages resulting from lead contamination in camps established by the United Nations Interim Administration Mission in Kosovo (UNMIK). The claims were rejected by the United Nations on the grounds that they amounted to a review of the performance of the mission's mandate. Two other cases in which the United Nations had rejected claims were noted in the 2014 letter. One was against the United Nations Assistance Mission for Rwanda for failing to protect

O'Brien, addressed to Brian Concannon, Director, Institute for Justice and Democracy in Haiti.

[19] Letter dated 5 July 2013 from the Under-Secretary-General for Legal Affairs, Patricia O'Brien, addressed to Brian Concannon, Director, Institute for Justice and Democracy in Haiti.

[20] *United Nations Juridical Yearbook 2001*, Part Two, chap. VI, sect. A, pp. 381 ff.

[21] Bruce C. Rashkow, "Immunity of the United Nations: practice and challenges", in *Immunity of International Organizations*, Niels Blokker and Nico Schrijver, eds. (Brill, 2015), p. 86.

victims of the 1994 genocide and the other was against the United Nations Protection Force for failing to protect the inhabitants of Srebrenica in Bosnia and Herzegovina in 1995.

33. It has been suggested to the Special Rapporteur by several sources that the legal advice originally submitted to the Secretary-General took a rather different approach to these crucial issues from that which was finally adopted, but this cannot be confirmed since none of the analyses of the Office of Legal Affairs have been made public. If true, however, it might explain why the arguments adduced in order to abdicate responsibility are both peremptory and inadequately justified.

34. In the view of the Special Rapporteur, and of most scholars,[22] the legal arguments supporting the claim of non-receivability are wholly unconvincing in legal terms. First, the claims appear to have all of the characteristics of a private law tort claim. The victims accuse the United Nations of negligence for failure to adequately screen its peacekeeping forces for cholera, failure to provide for adequate sanitation facilities and waste management at Mirebalais camp, failure to undertake adequate water quality testing and a failure to take immediate corrective action after cholera was introduced. These are classic third-party claims for damages for personal injury, illness and death, and they arise directly from action or inaction by, or attributable to, MINUSTAH. This would include a failure to exercise non-negligent supervision of the actions of private contractors. The United Nations has frequently processed claims involving alleged negligence, especially, for example, in relation to traffic accidents.

35. Second, the duties owed by the United Nations are directly analogous to those owed by a company or private property owner to ensure adequate waste management and to take adequate precautions to prevent spreading diseases.

36. Third, the contention that receipt of the claims would "necessarily involve a review of political and policy matters" is self-serving and unjustified. The claims are far from being "political" in the sense defined by the Secretary-General in 1995 as those targeting actions or decisions of political organs, nor are they rambling denunciations (see A/C.5/49/65). In terms of policies, it is true that waste management and other such internal policies might need to be reviewed, but if that prospect is enough to trigger non-receivability, it would become effectively impossible ever to claim damages from the United Nations.

37. Fourth, the Haiti case is clearly distinguishable from the Rwanda and Srebrenica claims, both of which alleged a failure by peacekeepers to fulfil the essence of their mandate and raised issues of operational judgment as opposed to a failure to avoid spreading a highly infectious and lethal disease. The Kosovo case is closer to the Haitian case, but might arguably be distinguished by the facts that UNMIK operated as an interim administration in Kosovo and that the United Nations should not be held responsible for contamination which pre-dated its arrival. It is noteworthy that the non-receivability classification did not prevent the Human Rights Advisory Panel established by the United Nations to examine cases of alleged human rights violations in Kosovo from holding in 2016 that "UNMIK

[22] Frédéric Mégret, "La responsabilité des Nations Unies aux temps du cholera", *Revue belge de droit international*, vol. 46, No. 1 (2013) p. 161.

was responsible for compromising irreversibly the life, health and development potential" of the child complainants.[23]

D. Responses to the position of the United Nations

38. Although the former United Nations High Commissioner for Human Rights, Navanethem Pillay, called publicly in 2013 for the Haitian victims to be compensated, the abdication approach has otherwise prevailed in the ranks of United Nations officials, under the watchful eye of the Office of Legal Affairs.

39. In contrast, special procedures mandate holders have been consistently critical of the refusal to take responsibility. In particular, successive Independent Experts on the human rights situation in Haiti have warned since 2012 of the costs of silence and denial on this issue. In 2016 the Independent Expert called for the urgent creation of a commission "to quantify the harm done, establish compensation, identify responsible parties, halt the epidemic and take other measures" (A/HRC/31/77, para. 102).

40. The global media has been systematically critical of the United Nations. For example, the *Economist* has accused the United Nations of dodging its responsibility, the *New York Times* argues that it has "failed to face up to its role in [Haiti's] continuing tragedy", *Business Insider* has referred to the cholera outbreak as "the UN's Watergate", the *Washington Post* has commented that "by refusing to acknowledge responsibility, the United Nations jeopardizes its standing and moral authority".

41. Even some of the Organization's traditional supporters have argued that its "peacekeeping brand has been stained indelibly by three major sins", which are sexual misconduct, the negligence involved in bringing cholera to Haiti and "the abject failure of the United Nations to own up to these lapses, and to respond to them in an effective, principled way".[24]

42. Scholars have criticized the Organization's "shabby formalistic maneuvers to avoid the very principles of the Rule of Law that they urge on the rest of the world",[25] its "preposterous" failure to provide a remedy,[26] its pursuit of "peacekeeping without accountability",[27] its compounding of a public health disaster with a public relations disaster,[28] its dangerous "legalism" which "effectively insulate[s] the organization from accountability",[29] and its "repeated

[23] Human Rights Advisory Panel, *N.M. and Others v. UNMIK*, case No. 26/08, opinion of 26 February 2016, para. 347.

[24] Allan Rock, "We must fix the UN's culture of coverups around peacekeeping", *Ottawa Citizen*, 13 June 2016.

[25] Jeremy Waldron, "The UN Charter and the rule of law", paper presented at New York University Law School, 1 November 2015, p. 15.

[26] Farhana Choudhury, "The United Nations immunity regime: seeking a balance between unfettered protection and accountability", *Georgetown Law Journal*, vol. 104, No. 3 (2016), p. 741.

[27] *Peacekeeping without Accountability: The United Nations' Responsibility for the Haitian Cholera Epidemic* (New Haven, Yale University, 2013).

[28] José Alvarez, "The United Nations in the time of cholera", *AJIL Unbound*, 4 April 2014.

[29] Mara Pillinger, Ian Hurd and Michael N. Barnett, "How to get away with cholera: the UN, Haiti and international law", *Perspectives on Politics*, vol. 14, No. 1 (March 2016), p. 70.

failures ... to provide adequate due process to those affected by its decision-making [which] has had a detrimental effect on the Organization and its activities".[30]

43. Among non-governmental organizations, Amnesty International has called for "a fair, transparent and independent mechanism to hear the claims of cholera victims, and ensure redress, including compensation".[31] Human Rights Watch has criticized the absence of any "independent adjudication of the facts".[32] And 34 non-governmental organizations have cited "overwhelming evidence that United Nations peacekeepers are responsible" as the basis on which to call upon the candidates for the post of Secretary-General to "pledge to ensure that victims of cholera in Haiti have access to fair remedies".[33]

E. Role of States

44. The opinion of the Office of Legal Affairs has provided a convenient justification for States to avoid engagement on the responsibility of the United Nations for the cholera epidemic in Haiti. Although the Security Council authorized the deployment of peacekeepers to Haiti and regularly reviews the status of the mission, it has notably failed to address the issue of the Organization's responsibility for the introduction of cholera. In June 2016 a bipartisan group of 158 members of the United States Congress stated that "each day that passes without an appropriate U.N. response is a tragedy for Haitian cholera victims and a stain on the U.N.'s reputation", and called upon the United States Secretary of State to pressure the United Nations to compensate the victims. Leading newspapers, including the *New York Times*, the *Washington Post* and the *Boston Globe*, endorsed this call to focus on the misdeeds of the United Nations. Yet there is much to be said for the view that without the acquiescence, if not the active support, of the United States and other Security Council members, the abdication approach would not have been adopted by the United Nations.

45. While the United Nations has been keen to emphasize how much it has done in Haiti, the reality is that Member States have so far agreed to contribute only 18 per cent of the $2.2 billion required to implement the National Plan for the Elimination of Cholera in Haiti 2013-2022.

III. Addressing the major concerns

A. Agreed principles

46. Before addressing the major practical concerns that have been used to justify the abdication approach, it is important to emphasize that there is broad agreement in relation to the key principles that are at stake, even if controversy about their application remains.

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[30] Devika Hovell, "Due process in the United Nations", *American Journal of International Law*, vol. 110, No. 1 (January 2016), p. 1.

[31] Letter dated 29 May 2015 addressed to the Secretary-General.

[32] See www.hrw.org/world-report/2016/country-chapters/haiti.

[33] See www.codebluecampaign.com/press-releases/2016/7/27.

47. First, it is generally agreed that United Nations immunity is a vitally important principle and that any acceptance of responsibility for the cholera outbreak should uphold that principle.

48. Second, it is agreed that United Nations actions should comply with human rights standards. The Organization specifically claims "to ensure that its peacekeeping operations and their personnel operate within the normative framework of international human rights law and are held accountable for alleged violations".[34]

49. Third, as noted above, the United Nations accepts in principle that it is liable to third parties for damages occurring in the course of its peacekeeping operations (see A/C.5/49/65).

50. Fourth, it is recognized in the Convention on the Privileges and Immunities of the United Nations of 1946, in the status-of-forces agreement and in United Nations practice that appropriate remedies should be provided where disputes arise in relation to liability for acts of a private character.

51. Given the extent to which there is agreement on this legal framework, the puzzle is why the current position of the United Nations remains so very distant from the outcome that these principles seem to require. In essence, there are two reasons. The first is the determination to abide by the unpublished legal opinion that declares the claim not to be of a private character. For the reasons explained above, this opinion should be reconsidered and revised. The second reason is the failure to openly acknowledge and clearly address a range of background considerations which have fuelled fears that have apparently deterred the various actors from seeking to resolve the problem in a principled manner. The report turns now to examining those matters.

B. Arguments against accountability

52. Issues of fundamental principle have not, as the preceding analysis demonstrated, been at the heart of the concerns of those supporting the current abdication approach of the United Nations. Instead, a range of practical or instrumentalist concerns have been raised. These concerns are important, especially because they seem to explain the depth of the opposition to a policy which would conform to the ideals and fundamental principles of the United Nations and would accept responsibility and facilitate appropriate action.

1. Protecting absolute immunity

53. The immunity of the United Nations from suit in national courts is seen by most observers as an indispensable means of protecting it from political attacks and avoiding putting it at the mercy of unpredictable and perhaps ill-intentioned or hostile national courts. But absolute immunity without the provision of alternative remedies is equally unsustainable, which is why the 1946 Convention provides for both immunity and remedies. In 2005, a review of peacekeeping recommended the waiver of immunity in relation to criminal acts "where continued immunity would impede the course of justice and where immunity can be waived without prejudice

[34] Letter dated 25 November 2014 from Assistant Secretary-General Pedro Medrano Rojas, Senior Coordinator for the Cholera Response in Haiti, addressed to the special procedures mandate holders, para. 57.

to the interests of the United Nations" (A/59/710, para. 86). A similar principle should apply in the present context.

54. The irony of the position of the United Nations on cholera in Haiti is that far from strengthening its case for immunity, it has provoked a backlash which has led scholars and commentators to call for immunity to be lifted,[35] for only functional immunities to be recognized,[36] or for national courts to adapt their approach to immunity to respect the human rights principle of access to a remedy.[37] Support for these suggestions will only grow if an appropriate remedy is not provided in the Haiti cholera case.[38] There is much to be said in favour of the argument, supported by many scholars and invoked in the litigation, that the absolute immunity conferred by article II of the 1946 Convention is contingent upon respect for the requirement of article VIII, section 29, that "appropriate modes of settlement" be provided by the United Nations. The rejection of this argument by courts in the United States provides no assurance that courts elsewhere will follow suit.

2. Surrendering to the threat of litigation

55. Some officials and diplomats have suggested that although they would favour providing an appropriate remedy in this case, nothing can be done until the shadow of litigation has been lifted. To take action before then would only encourage many more suits designed to achieve the same result: the proverbial "floodgates" would be opened. But even in the wake of the dismissal of the suit on 19 August 2016, the floodgates argument seems to motivate continuing insistence on the abdication policy.

56. If the floodgates argument was in fact being invoked in good faith, then it would augur very badly indeed for the United Nations since it would imply that there are actually many cases in which the Organization has unfairly refused to provide a remedy and that the United Nations will not budge unless litigation is initiated. In fact, the dismissal of the victims' claims by the United States Court of Appeals is likely to generate even more pressure on victims and advocates to try to persuade authorities and courts in other countries that the immunity of the United Nations in such situations leads to an unconscionable result that needs somehow to be rectified.

3. Creating a bad precedent

57. A closely related argument is that if the United Nations "settles with private claimants or enters into dispute resolution processes that result in a finding that compensation is owed, it may have a chilling effect on the Organization".[39] But this suffers from the same infirmities as the floodgates argument. If United Nations

[35] Ian Hurd, "End the UN's legal immunity", The Hill, 22 July 2016.

[36] Kristen E. Boon, "The United Nations as Good Samaritan: immunity and responsibility", *Chicago Journal of International Law*, vol. 16, No. 2 (2016), p. 383.

[37] Rosa Freedman, "UN immunity or impunity? A human rights based challenge", *European Journal of International Law*, vol. 25, No. 1 (2014), p. 254. See also Jan Wouters and Pierre Schmitt, "Challenging acts of other United Nations' organs, subsidiary organs, and officials," in *Challenging Acts of International Organizations before National Courts*, August Reinisch, ed. (Oxford University Press, 2010), p. 110.

[38] See Reinisch, "Conclusion", in *Challenging Acts of International Organizations before National Courts*, p. 273.

[39] Ibid., p. 346.

practices in terms of third-party liability are consistent and fair, and if claims are settled on a basis that is sustainable for the Organization, there is no reason why there would suddenly be a rash of claims that are not currently being pursued. The fear of creating a bad precedent is a classic argument to justify inaction in the face of injustice.

4. Penalizing troop-contributing countries

58. Various observers have suggested that recognition of liability in a case such as cholera in Haiti would deter troop-contributing countries from participating in future missions. But there are several problems with this analysis. First, the reputational damage caused to troop-contributing countries by the Organization's rejection of legitimate claims is surely even greater than that flowing from a just settlement. A festering sore is much worse than a wound that is healed. Second, those States that are generally keen to contribute troops will be less likely to be asked if their contingents remain under the shadow of unresolved allegations. Third, in line with the 1995 General Assembly resolution on third-party liability, the principal burden of financial settlements that are reached in response to legitimate claims should fall upon the Organization itself and not upon the individual State. Thus, the most effective way to address the fears of troop-contributing countries is to ensure that an insurance scheme is in place, whether set up internally or with an external insurer.

5. Undermining the financial viability of peacekeeping

59. Fears have been expressed that the success of the current litigation could "bankrupt" the United Nations itself, or at least its peacekeeping operations. These fears reflect calculations based on the amounts claimed by the litigants before the United States courts: $100,000 for deceased victims and $50,000 for each victim who suffered illness or injury. Multiplied by the current official figures of 9,145 dead and 779,212 infected, potential liability, excluding claims for those certain to die and be infected in the years ahead, would amount to $39,875,100,000, or almost $40 billion. Since this is almost five times the total annual budget for peacekeeping worldwide, it is a figure that is understandably seen as prohibitive and unrealistic. At a time of widespread budgetary austerity, shrinking support for multilateral development and humanitarian funding and the prioritization of funding for the refugee crisis, it is perhaps not surprising that both the United Nations and Member States have in effect put the Haiti cholera case into the "too hard basket" and opted to do nothing.

60. But again, this is short-sighted and self-defeating. The figure of $40 billion should stand as a warning of the consequences that could follow if national courts become convinced that the abdication policy is not just unconscionable but also legally unjustified. The best way to avoid that happening is for the United Nations to offer an appropriate remedy. The present report is not the place to offer a detailed estimate of what that should look like or what it might cost. But there are certain guidelines and precedents that can helpfully be kept in mind in this context.

61. First, scholars have debated whether the optimal approach for the United Nations to take is one that proceeds from the principles of human rights or from the law of torts. For academic purposes, a rich debate can be, and has already been, had around some of these issues. From the perspective of the United Nations, neither of

these regimes fits the situation perfectly and elements can be drawn from both in shaping the best response.[40]

62. Second, General Assembly resolution 52/247 on third-party liability is of major relevance.[41] It sets a temporal limitation for the submission of claims, but this may be extended by the Secretary-General in exceptional circumstances. Compensation payable for injury, illness or death is to be determined by reference to local compensation standards, but cannot exceed $50,000. Compensation is payable neither for non-economic loss nor for punitive or moral damages.

63. Third, various precedents exist for the United Nations to make one-time lump-sum payments for damages caused by peacekeeping operations. An agreement reached with Belgium in 1965 involved acceptance of "financial liability where the damage is the result of action taken by agents of the United Nations in violation of the laws of war and the rules of international law", but was stated to be "without prejudice to the privileges and immunities which the United Nations enjoys". Similar agreements were also entered into with Luxembourg in 1966 and Italy in 1967.[42]

64. Fourth, different arrangements might be contemplated for cases of death than for those involving injury. Given the ongoing nature of the problem and the complexity of compensating all of those who became ill, a programmatic approach might be an important element in relation to the second category of victim.

65. Fifth, guidance might be drawn from important precedents for lump-sum settlements at the national level. Relevant examples include the arrangements set up in the United States to compensate the victims of the 11 September 2001 terrorist attacks,[43] the 2014 agreement between the United States and France to compensate Holocaust victims[44] and the Canadian Reparations Programme for the Indian Residential School System, created to redress the historical legacies of discrimination suffered by Aboriginal children attending those schools.[45]

66. It is clear that the United Nations could make use of these various precedents in order to shape an approach to compensation as part of a broader package that would provide justice to the victims and be affordable.

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[40] Boon, "The United Nations as Good Samaritan"; Hovell, "Due process in the United Nations"; and C. Ferstman, *Responding to the Introduction of Cholera to Haiti: Policy Options* (London, Redress, 2016).

[41] Note, however, paragraph 7, in which the General Assembly endorsed the view of the Secretary-General that the United Nations cannot limit its liability for cases where wrongful acts have been committed wilfully or with a criminal intent or because of gross negligence (A/51/903, para. 14).

[42] Freedman, "UN immunity or impunity?", p. 248.

[43] Mike Steenson and Joseph Michael Sayler, "The legacy of the 9/11 Fund and the Minnesota I-35W bridge-collapse fund: creating a template for compensating victims of future mass-tort catastrophes", *William Mitchell Law Review*, vol. 35, No. 2 (2009), p. 524.

[44] "United States and France sign agreement to compensate Holocaust victims", *American Journal of International Law*, vol. 110, No. 1 (2016), p. 117.

[45] *The Indian Residential Schools Settlement Agreement's Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients* (Ottawa, Aboriginal Healing Foundation, 2010).

IV. Why the position of the United Nations needs to change

67. The Special Rapporteur has argued above that the major concerns that appear to underlie the abdication approach can all be addressed satisfactorily without jeopardizing any core interests of the United Nations or its Member States. But the case to be made in favour of action is actually much stronger than that conclusion might suggest. Thus, before outlining what a constructive and responsible approach might look like, it is important to highlight the positive reasons which argue strongly for an urgent change of policy.

68. *Peacekeeping*. This is an increasingly crucial part of the role of the United Nations in many parts of the world. The potential for success depends on various factors, but pre-eminent among them are legitimacy, credibility and responsiveness. In Haiti, the reputation of MINUSTAH has been gravely tarnished by the cholera episode. And the message that the Organization is unprepared to accept responsibility for negligent conduct which gives rise to dire consequences, despite the fact that it has been definitively found guilty both in the scientific world and in the court of public opinion, will not have escaped other States that are contemplating agreeing to host or participate in peacekeeping operations. While there is a big difference between sexual abuse and negligent conduct, there is an important message for the United Nations in the Haiti context to be learned from the independent review on sexual abuse in the Central African Republic. The review panel warned that "when the international community fails to care for the victims or to hold the perpetrators to account", it amounts to a betrayal of trust.[46]

69. *The rule of law*. The Secretary-General and the Deputy Secretary-General have given strong voice to the resolutions of the General Assembly in which the Assembly underscored the central importance of respecting the rule of law. Yet, the approach of the United Nations in this case undermines the rule of law and diminishes the Organization's credibility as an advocate for its respect. By failing to take even minimal steps to hold itself accountable and compensate those affected, or even to explain the reasons for its refusal to do so, the United Nations replicates the very behaviour it seeks to modify elsewhere. The rule of law requires that the United Nations abide by its treaty obligations, including those under the status-of-forces agreement, as well as fundamental human rights such as providing an effective remedy to those harmed by the Organization. It also requires that the Organization act consistently and respond in comparable fashion to all legitimate private law claims made against it. The United Nations should be leading by setting a good example.

70. *Human rights*. One of the most impressive human rights achievements of the United Nations in recent years emerged from a similar time of crisis within the Organization as a result of its role in the final months of the civil war in Sri Lanka in 2010. In response to concerted criticism, the Secretary-General first commissioned an internal review panel to explore whether the United Nations had met its responsibilities to prevent and respond to serious violations of human rights and humanitarian law. He then followed up by announcing his Human Rights Up Front initiative, which "aims to help the United Nations act more coherently across the

[46] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic* (2015).

pillars of the Organization's work — peace and security, development, and human rights". As the Deputy Secretary-General has noted: "Human Rights Up Front is about improving how the United Nations system functions and how staff members are to perform." Yet the refusal to address the human rights violations that have occurred in Haiti as a result of the cholera epidemic stands in stark contrast to the excellent intentions of that initiative.[47] Unless action is taken, the message is that a double standard applies according to which the United Nations can insist that Member States respect human rights, while rejecting any such responsibility for itself even in a particularly egregious situation.

71. *Remedies.* The provision of remedies for wrongdoing is an essential dimension of the law relating to immunity, of human rights law, of the rule of law and of the principle of accountability. The High Commissioner for Human Rights regularly and rightly admonishes States that refuse to provide a remedy to those whose human rights have been violated, yet in the Haiti case the United Nations has refused even to contemplate a range of remedies which could reasonably and feasibly be provided. Similarly, in the transitional justice context, the United Nations consistently calls upon States to acknowledge wrongdoing, to ensure meaningful processes for the vindication of claims and to provide victims with redress. Yet in the Haiti case the victims are told that a handful of broadly focused development projects should provide sufficient redress. Even in the context of armed conflicts, various United Nations bodies have urged States to provide forms of compensation, whether ex gratia or otherwise, to the killed or injured even though the legal obligation to provide such compensation is not uncontested.

72. *Office of the Secretary-General.* It is vital that the integrity of the Office of the Secretary-General be upheld. The current Secretary-General has visited and grieved with cholera victims in Haiti, has talked of the Organization's moral duty and has generally expressed deep concern about the issue. But he has consistently stopped short of taking any of the steps that are required if the United Nations is to move beyond its policy of abdicating responsibility. From the outside, and to many on the inside, the reason seems to be that the legal advice given by the Office of Legal Affairs has been permitted to override all of the other considerations that militate so powerfully in favour of seeking a constructive and just solution. Rule by law, as interpreted by the Office, has trumped the rule of law.

73. In summary, what is at stake is the Organization's overall credibility in many different areas. Its existing position on cholera in Haiti is at odds with the positions that it espouses so strongly in other key policy areas. It has a huge amount to gain by rethinking its position and a great deal to lose by stubbornly maintaining its current approach.

V. New approach of August 2016

74. Prior to finalizing the present report, a draft was submitted to the Secretary-General and other relevant officials for comment. To the Special Rapporteur's surprise, that draft was leaked to the press and appeared in full in the *New York*

[47] Rosa Freedman and Nicolas Lemay-Hebert, "'Jistis ak reparasyon pou tout victim kolera MINUSTAH': the United Nations and the right to health in Haiti", *Leiden Journal of International Law*, vol. 28, No. 3 (2015), p. 507.

Times. Subsequently, the Deputy Secretary-General replied to the Special Rapporteur on 19 August 2016. The reply contained several elements that are novel and very welcome. In particular, the United Nations committed to the adoption of a "new approach" which "will address many of the concerns raised in [the present] report". That approach will include, as "a central focus", a package to provide "material assistance and support" to the victims and their families, over and above existing programmes. The support package and delivery mechanism will be elaborated through "a transparent process" involving consultation with the Haitian authorities, Member States and victims. The Organization also committed to intensify its efforts in response to the epidemic. Each of these undertakings is important. The implications are that there will be an approach which goes well beyond the existing one, will be transparent, will mobilize additional resources and will compensate victims.

75. By the same token, the new policy remains critically incomplete. There is not yet a promise of an apology or an acceptance of responsibility. The repetition of previous expressions of "deep regret" and "moral responsibility" is nothing new. The "legal position of the Organization", which is to deny all legal responsibility, is comprehensively reaffirmed. The obligation to provide an appropriate remedy is thus rejected, and instead solutions must be sought solely "through political, diplomatic or other means". In other words, the lamentably self-serving legal contortions devised to escape any form of legal responsibility still remain in place. Unless the new process also involves a reconsideration in this regard, the Organization's ability to salvage its moral, let alone its legal, credibility and authority will be gravely undermined.

76. On balance, the new approach is clearly a breakthrough, but difficult questions remain to be answered. They include:

(a) Why is it not possible to go beyond the acknowledgement of "moral responsibility" and actually accept the legal responsibility that patently applies in light of the facts as now understood?

(b) Why, without some new element in the picture, and in the absence of any apology or the recognition of legal responsibility, would Member States, which over recent years have been prepared to fund only 18 per cent of existing appeals, now decide to contribute more generously?

77. Unless the new approach also includes a revised legal policy, it will entrench a precedent according to which the United Nations will never in the future accept legal responsibility, no matter how horrendous the facts. That will be the ultimate ongoing travesty of justice.

VI. The way forward

78. The abdication approach has thrived because sterile legal formalism, facilitated by a failure to explore constructive options, has been permitted to prevail. But that approach is contrary to both the interests of justice and the interests of the United Nations.

79. There are strong grounds for now issuing an apology and accepting responsibility. First, the element of doubt as to the responsibility of the United Nations for the introduction of cholera has been definitively removed. A series

of scientific studies and statements subsequent to the issuance of the report of the independent panel of experts, as well as the experts' own later clarifications, leave no reasonable doubt and the United Nations position must reflect that reality. A policy that might arguably have been justified in years gone by is clearly no longer supported by the scientific facts.

80. Second, the existing legal policy was formulated some six years ago, and pays no heed to the important lessons that have emerged from both the Human Rights Up Front initiative and the report on the independent review of sexual abuse in the Central African Republic.

81. Third, there is now a much stronger commitment to taking the rule of law seriously in the context of the approach adopted within the United Nations itself, and this needs to be reflected in the legal response to cholera in Haiti.

82. The present report is not the appropriate context in which to spell out in detail what remains to be done to right the wrongs that have occurred. But it is possible to sketch in broad outline the principal steps that are required.

83. First and foremost, there should be an apology and an acceptance of responsibility in the name of the Secretary-General.

84. The United Nations should acknowledge that the claims are of a private law character and accordingly should offer an appropriate remedy, as is legally required of it. The new approach announced by the Deputy Secretary-General could go a long way towards constituting such a remedy.

85. Since August 2016 the Secretary-General appears to have accepted that existing project-based initiatives cannot be seen as a substitute for personal compensation for victims and their families. His proposed new package should ensure adequate compensation, taking account of the elements identified above.

86. In line with the Deputy Secretary-General's statement, the process should reflect a new-found commitment to consulting with all stakeholders on as transparent a basis as possible.

87. The process outlined here should also provide the basis for the approach to be adopted by the United Nations in the future in such cases.

88. The Haitian authorities, including the present interim Government, needs to overcome the reluctance of previous Governments to press the international community to ensure that the human rights of its citizens are upheld.

89. Going forward, the role of Member States will be absolutely crucial. Although more lives have been lost in Haiti to cholera than were lost in the entire Ebola epidemic in Africa, too many States have so far wrongly assumed that the case of Haiti is too hard to resolve. States that provide substantial support to the peacekeeping budget, particularly the United States, which is the principal contributor, should actively champion a resolution to this ongoing crisis that respects the rights of the victims and best serves the reputational and other interests of the United Nations. A failure to do so will cause irreparable harm to the Organization and the esteem in which it is held around the world.